IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr. Appeal No. 256 of 2000.

Date of Decision: 27-7-2007.

State of H P. Appellant.

Versus

Sunder Lal. Respondent.

Coram

Hon'ble Mr. Justice Surinder Singh, J.

Whether approved for reporting[1]? No

For the appellant : Sh.V K Verma, Additional Advocate General.

For respondent : Shri Jagdish Vats, Advocate.

Surinder Singh, J . (oral)

Respondent Sunder Lal, was tried and acquitted for the offences punishable under Section 451, 506 and 304 of the Indian Penal Code in Sessions Trial No. 3 of 1998 by the learned Sessions Judge.

The State felt aggrieved by the judgment of acquittal, filed the instant appeal and leave to appeal was granted on 26.5.2000 by this Court, now the matter has been finally heard.

Shri V.K. Verma, learned Additional Advocate General has argued that the reasoning advanced by the learned trial Court for making base for acquittal was manifestly wrong, the testimony of the most reliable witnesses was discarded on flimsy grounds.

Contra, the learned counsel for the respondent has supported the impugned judgment of acquittal.

I have given my thoughtful considerations to the rival contentions and have thoughtfully considered the evidence on record.

Whether reporters of the Local papers are allowed to see the judgment? Yes.

The prosecution case shorn of un-necessary details, has been that the complainant Lakh Jiu (75), already dead, Lafan Sukh (deceased) was his younger brother. Though both were living separately but were having their houses side by side in Dogri at village Sapni. It was alleged that on 26.10.1995 at about 1.00 P.M, the respondent entered into the room and gave beatings to Lafan Sukh, when the complainant tried to intervene, he was pushed away. Lafan Sukh came out and cried for help. Consequently, PW Bhagwar, his wife Mulki and Shyam Guru came there and rescued him. The respondent also threatened him with dire consequences. The deceased fell unconscious, he was taken to Reckong Peo District Hospital and the report was lodged in Police Station. Since the place of incident fell in Police Station, Sangra, the FIR was registered there under Section 451, 323 and 506 of the Indian Penal Code.

The injured Lafan Sukh was medically examined, his injury report Exhibit-PD issued by Dr. Sandeep (not examined) was taken into possession who had opined that the injury to the spine sustained by him was grievous. The injured remained hospitalized for six days and was discharged on 6.11.1995. On 11.11.1995 he was taken to IGMC Hospital, Shimla and remained admitted there up to 5.1.1996. On 2.2.1996 he had died and the case was converted under Section 304 of the Indian Penal Code. The body of deceased was subjected to autopsy, the report is Exhibit-PB proved by Dr. Sunder Singh (PW2). In the opinion of the Doctors, the deceased had died due to myocardial infraction due to thrombosis of (Rt) saphenous vein and occlusion of left Ant. Descending coronary artery. The time of death between death and injury was instantenous and the case summary Exhibit PA was produced in evidence.

The Police prepared the challan under the aforesaid sections and put the respondent on trial. He denied the charges and claimed trial.

In order to prove the prosecution case, the evidence was led. Dr. Sunder Singh gave different opinion of death and he did not conquer with Dr. Sandeep (PW2), therefore he was not examined. The case of the respondent in his statement under Section 313 Cr.P.C. was denial simplicitor. He was called upon to lead his evidence but no defense was led.

On the conclusion of the trial and upon hearing the counsel for the parties, the learned Sessions Judge acquitted the respondent on the grounds that PWs Bhagwar and his wife Mulki who were the close relatives of the deceased did not report the matter to the Police. There has been a delay in lodging the FIR by Lakh Jiu and his close relatives, in such a situation the inordinate delay was not explained, which could not be lightly overlooked. Secondly, the injured was medically examined on 30.11.1995 in I.G.M.C. Shimla, his statement under Section 161 Cr.P.C. was recorded only on that date. There was no material brought on record to show that he was not fit earlier to make the statement. To place reliance on his statement (Exhibit-PF) under Section 161 of the Code of Criminal Procedure after his death, though relevant under Section 32 of the Evidence Act, yet no explicit reliance can be placed upon it in view of the above fact. Thirdly, there was a contradiction regarding the place of occurrence and the original report and the statement Ext. PF supra and also by PW3 Bhagwar and Mulki (PW4). Fourthly, PW3 and PW4 aforesaid had contradicted themselves regarding having seen the incident. In the same breath they have deposed that they were on the top of the roof and saw the injured when came out side and had shouted for help and then stated in the cross-examination that they entered the room when they saw him being given

by the respondent. Fifthly, the presence of daughter-in-law in Exhibit-PF has been mentioned but no prosecution witness has stated so, when examined in the Court. Sixthly, there has been confusion about the exact place of occurrence which was further contradicted by the site plan. Seventhly, the medical evidence did not lend assurance in view of the Juxta-opposite stand taken by Dr. Sandeep regarding the cause of death who was not examined. PW2 Dr. Sunder Singh has stated that the injury caused to the spine of the deceased led to quadriplegia which was sufficient to cause the death. Whereas, Dr. Sandeep did not support this view. He alleged pressure to sign the post mortem report, thus he was not examined. On the critical examination of the evidence, the learned trial Court came to the conclusion that the deceased was 72 years of age, the conclusion based upon the above facts led to the ultimate analysis that deceased had died due to natural death after about three months of the alleged incident, not owing to the alleged injuries.

On the basis of the above circumstances, the learned trial court gave the benefit of doubt and acquitted the respondent.

I have re-evaluated the evidence on record. I did not find anything to conclude that the learned trial court had ignored any admissible evidence on flimsy grounds nor I have found any compelling and substantial reason for doing so. These aspects have been highlighted by the Apex Court in ***1996 (9) SCC 225, 2000 (4) SCC 271, 2003 (11) SCC 58, 2004 (11) SCC 410***, how and in what manner in the judgment of acquittal the appellate court can evaluate the evidence.

Since I do not find any perversity in the impugned judgment, thus, I concur with the ultimate findings of the learned trial Court. The appeal

is thus dismissed. The respondent is discharged of his bail bonds entered upon him at any time of the proceedings of this appeal.

(Surinder Singh)
Judge.

July 27, 2007.
(bm)